

Was the Iraq war legal, or illegal, under international law?

By Evan Augustine Peterson III
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During a BBC radio interview on Wednesday, UN Secretary General Kofi Annan created a controversy by reiterating his long-held position that the Iraq War was illegal because it breached the United Nations Charter. [1] On Thursday, the imperial leaders of the “Coalition of the Willing” retaliated by vehemently arguing that their Iraq War was, to the contrary, legal. [2]

Obviously, this dispute raises a legal question: “Whose opinion is correct, and whose is incorrect?” Additionally, we should be asking ourselves: “Who decides? (i.e., “Whose jurisprudential opinion shall be dispositive for purposes of resolving this dispute?”)

It seems eminently reasonable – even for the disputants – to conclude that the optimal source of guidance on this question of international law would have to be the world’s foremost experts in the field of international law. Hence, the UN’s chief and the coalition’s leaders need to know how the world’s top international law experts would resolve their jurisprudential dispute. And we, the people, need to know who’s right and who’s wrong here.

Realistically, one cannot seriously expect the disputants – much less their national electorates – to wade through numerous legal documents, most of which contain rigorous and not-occasionally tedious reasoning, to find the correct answer. Thus, it seems prudent to proceed directly to the world’s most authoritative answer to our pressing question du jour: “Was the Iraq War legal, or illegal, under international law?”

And The World’s Most Authoritative Answer Is ...Among the world’s foremost experts in the field of international law, the overwhelming jurisprudential consensus is that the Anglo-American invasion, conquest, and occupation of Iraq constitute three phases of one illegal war of aggression. [3]

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Moreover, these experts in the international law of war deem both preventive wars and preemptive strikes to be euphemistic subcategories of outlawed wars of aggression. And the experts' answer would hold true regardless of whether their governing legal authority was: (A) the UN Security Council Resolutions that were passed to implement the conflict-resolution provisions of the UN Charter; or (B) prior treaties and juridical holdings which have long since become general international law. [4]

Readers who need to “trust but verify” (i.e., to corroborate) for themselves that the experts' overwhelming opinion is exactly as stated above should read a document entitled “15 January 2003.” (Find it by scrolling down approximately one-fourth of the way, after you've clicked onto this ES website: <http://www.eurolegal.org/useur/bbiraqwar.htm> “The Legality Of The Iraq War”

Why?

That document was drafted and signed by the world's foremost international law experts – the prestigious International Commission of International Law Jurists – to provide ultimate proof of their authoritative opinion concerning the legal status of war against Iraq. Furthermore, this large body of eminent international law experts explicitly stated that they'd drafted their legal document in order to advise Messrs. Bush and Blair prior to the invasion: (1) that it would be blatantly illegal under international law for the Anglo-American belligerents to invade Iraq; and (2) that their joint decision as Commanders-in-Chief to commence hostilities would constitute prosecutable war crimes.

Skeptical readers who don't regard this highly-authoritative conclusion as an adequate answer are invited to undertake the legal reasoning for themselves at the ES website. Note that every applicable Article in the UN Charter, and every relevant UN Security Council Resolution, is cited and analyzed therein. And readers who continue to scroll down the ES website will find a succession of articles which summarize the opinions of noteworthy individual experts on international law. These, too, strongly confirm that the invasion of Iraq constituted an illegal war of aggression under international law. [5]

Finally, ambitious readers will learn what non-credible source was most responsible for propagating the fictitious pre-war claim that Saddam Hussein's Iraq was involved in the 9/11 terrorist attacks on the WTC and the Pentagon (hint: yet another uncredentialed neocon think-tanker from the thoroughly-discredited American Enterprise Institute).

Three Conclusions

It is the overwhelming consensus of the world's foremost international law experts that: (1) UN Secretary General Annan's opinion is correct (i.e., true) because the Iraq War was, indeed, illegal; and (2) the opinion of the “Coalition of the Willing's” leaders is incorrect (i.e., false) because their Iraq War was NOT legal. (3) Therefore, Americans must break free of

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the neocons' self-delusional groupthink mentality by learning to differentiate between fact and truth, which are all-too-easily confused. For instance, it's an undeniable fact that Messrs. Bush and Cheney have been arguing along the campaign trail that "The Iraq War was legal!" Nevertheless, the mere fact that they've been vehemently arguing that point certainly does NOT make it true! Their argument is flawed by a logical fallacy called an ipse dixit (i.e., "something asserted but not proved"). As we've already seen, their argument is just plain WRONG AS A MATTER OF LAW! Therefore, Messrs. Bush and Cheney are making a false argument (i.e., deceptively asserting something that is untrue).

The Bottom Line

Americans should reject the temptation to vote for Messrs. Bush and Cheney, because: (1) both men were advised beforehand that their decision to commence the invasion of Iraq would be blatantly illegal under international law; (2) they invaded nonetheless, and now they're cynically attempting to mislead the public again by falsely arguing that "The Iraq War was legal!"; (3) however, their argument is legally-meritless nonsense – the current equivalent of their earlier false argument that torture is a legal method for the US military's interrogation of prisoners; (4) they've repeatedly demonstrated their disdain for universal human rights and democratic governance under the rule of law; and (5) the 21st-century world isn't Tombstone's OK Corral and they certainly aren't Wyatt Earp and Doc Holliday – however much they might wish us to believe that they are! [6]

ENDNOTES

[1] Read this 9-16-04 PI article: http://www.politinfo.com/articles/article_2004_09_16_4815.html "UN Says Nothing New In Annan's 'Illegal War' Comment". Also see this 9-17-04 GU article, which contends that UN Secretary General Annan's statement wasn't his long-held opinion, but is new and belated: <http://politics.guardian.co.uk/iraq/story/0,12956,1306642,00.html> "The War Was Illegal"

[2] Read this 9-17-04 JO article: http://www.jamaicaobserver.com/news/html/20040916T210000-0500_66150_OBS_BUSH_JOINS_WORLD_LEADERS_IN_DEFENDING_WAR_AGAINST_IRAQ.asp "Bush Joins Coalition Leaders In Defending War Against Iraq"

[3] Read the 9-15-04 ES's indispensable analysis at: <http://www.eurolegal.org/useur/bbiraqwar.htm> "Legality of the Iraq War". [Skeptical readers should not read to confirm their biases, but instead should set their biases aside until they've finished reading all of the

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legal arguments on this website, which will take awhile.]

[4] There seems to be one relevant omission from the ES website. General international law could have been cited as an alternative basis for proving the Iraq War's illegality by analyzing these authoritative precedents: (A) the Kellogg-Briand Pact of Paris (1928); and (B) the Charters, Principles, Indictments, and Holdings from the International Military Tribunals at Nüremberg and Tokyo (1945-48).

[5] Generally speaking, legal opinions offered by government attorneys are NOT considered to be authoritative because: (a) they're drafted in the adversarial mode of an advocate, often under self-interested political pressure from the executive branch; (b) even at its best, their reasoning tends toward casuistry, reflecting Cicero's injudicious maxim, "salus populi suprema lex esto" (De Legibus, III, 3.8: "Let the welfare of the people be the supreme law!" Or the Bushites' tortuous translation thereof: "We feel that we can legally torture our prisoners now if it might save our people later!"); and (c) for an apt example, see the history of the Third Reich's attorneys Hans Frank and Wilhelm Frick, whose pre-war legal advice to Reichsführer Hitler was that Germany could use the pretext of an imminent threat to "preemptively" invade Poland, for which war crime they were both tried, sentenced, and hanged to death by the International Military Tribunal at Nüremberg. Note bene, Attorney General Ashcroft and Bush administration "torture memo" attorneys Bybee, Chertoff, Gonzales, Haynes and Woo!

[6] Read Douglas Jehl's 9-16-4 CD/SPI article at: <http://www.commondreams.org/headlines04/0916-02.htm> "CIA Analysis Holds Bleak Vision For Iraq's Future". Also see the 9-16-04 Dreyfuss Report column: http://tompaine.com/archives/the_dreyfuss_report.php "Annan For President"

Evan Augustine Peterson III, J.D., is the Executive Director of the American Center for International Law ("ACIL").